

QH
76.5
.N8
W47
1991
c.2

WETLANDS PROTECTION STUDY COMMISSION



REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA

LEGISLATIVE LIBRARY

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

Letter of Transmittal..... i

INTRODUCTION..... 1

COMMITTEE PROCEEDINGS..... 3

COMMITTEE RECOMMENDATION AND
LEGISLATIVE PROPOSAL..... 6

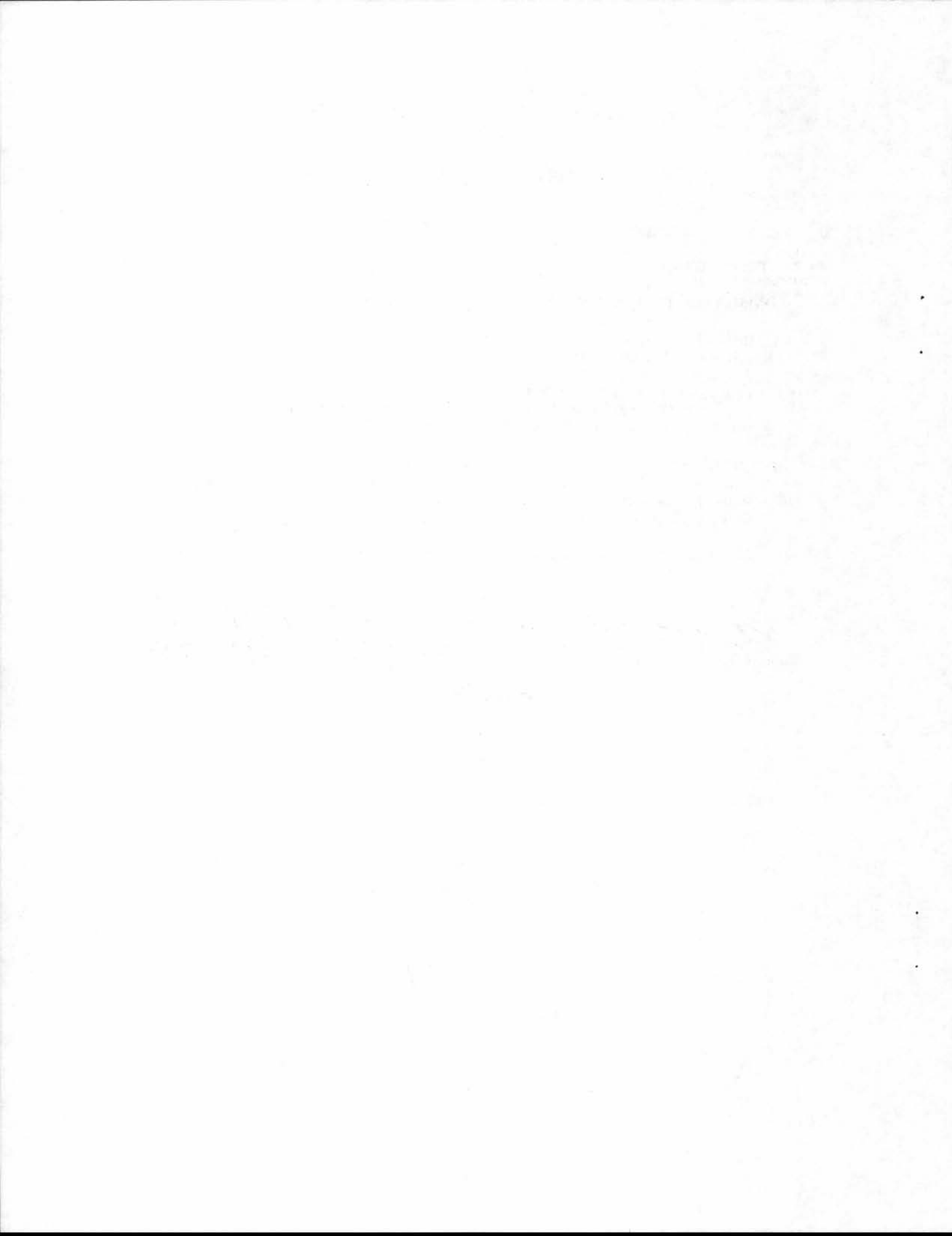
 Legislative Proposal I - A BILL TO BE ENTITLED
 AN ACT TO AUTHORIZE THE CONTINUATION OF THE
 WETLANDS PROTECTION STUDY COMMISSION 7

APPENDICES

A. Relevant portions of Chapter 802 of the 1989
 Session Laws authorizing the study 9

B. Membership of the Commission 11

QH 76.5 .N8 W47 1991 c.2



NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE: (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE: (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE: (919) 733-6834



TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: (919) 733-2578

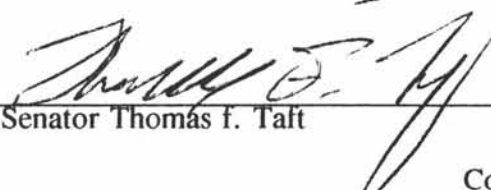
MARGARET WEBB
LEGISLATIVE INFORMATION OFFICER
TELEPHONE: (919) 733-4200


March 1, 1991

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Wetlands Protection Study Commission herewith submits its report to the 1991 General Assembly pursuant to the authority of Section XVI of Chapter 802 of the 1989 Session Laws.

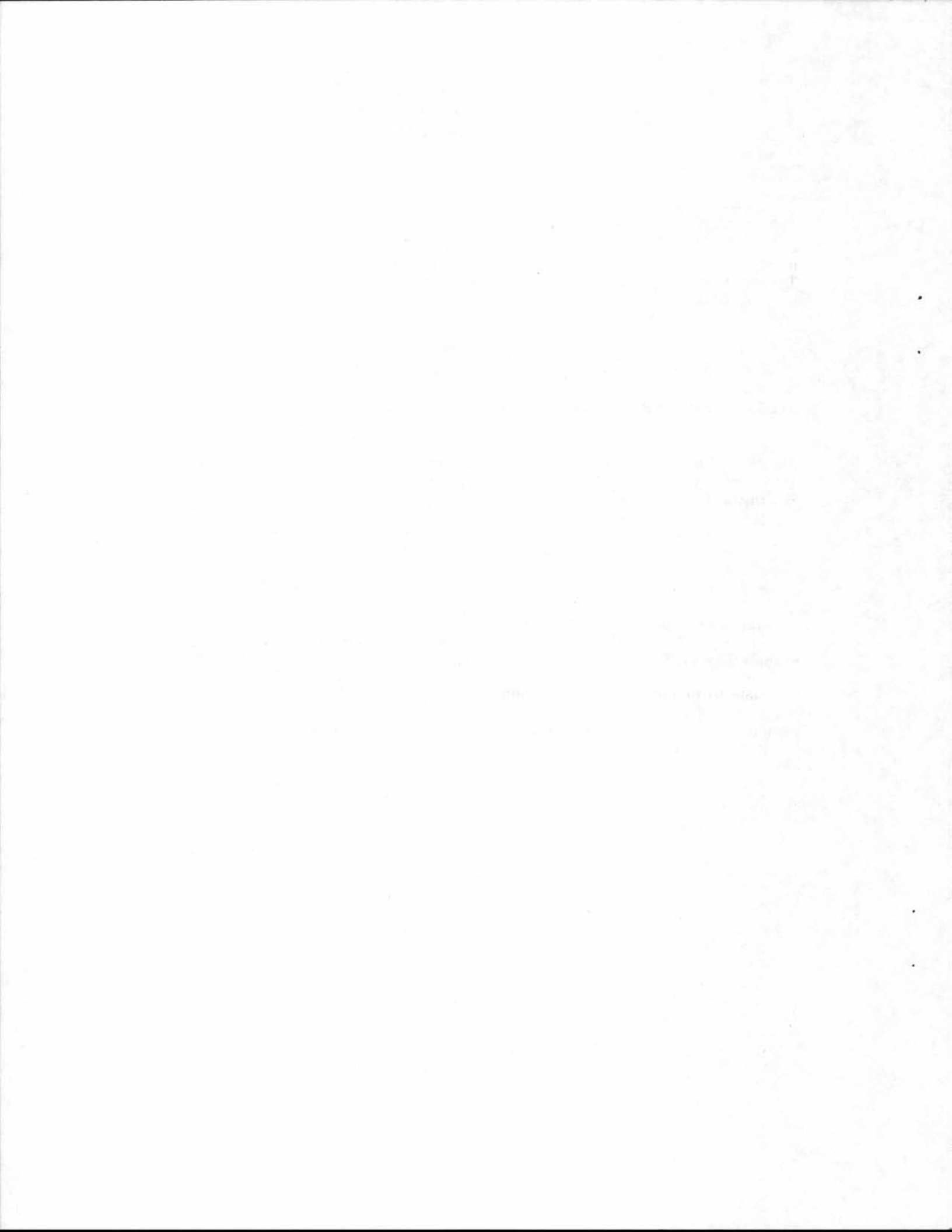
Respectfully submitted,


Senator Thomas F. Taft


Representative W. Bruce Ethridge

Cochair

Wetlands Protection Study Commission



INTRODUCTION

The Wetlands Protection Study Commission was authorized by Section XVI of Chapter 802 of the 1989 Session Laws. The authorizing legislation is set forth in Appendix A of this report. The Commission was chaired by Senator Thomas F. Taft and Representative W. Bruce Ethridge. The membership of the Commission is listed in Appendix B of this report. A Commission notebook containing the Commission minutes and all information presented to the Commission is filed in the legislative library.

In establishing the Commission, the General Assembly recognized that North Carolina's wetlands are a valuable and productive resource and serve a number of functions which are vital to the public health, safety, and welfare. It recognized that there is a need to develop a program for the management of activities in wetlands. The General Assembly directed that the goals of the program should be to preserve wetlands of significant ecological value; to protect and manage wetlands so as to prevent any net loss of their ecological functions; to preserve private property rights; and to simplify and consolidate wetlands regulations. The long term goals of a State wetlands protection program should be to increase the number and enhance the quality of wetlands in the State.

The Commission was charged with studying the desirability and feasibility of State assumption of the federal permitting program under Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (33 USC § 1344). The Commission was also directed to study the necessary elements of a statewide wetlands protection program and to develop recommendations for legislation to establish a wetlands protection program adequate to preserve wetlands of significant ecological value from unnecessary alteration; to protect and manage wetlands so as to prevent any net loss of the ecological function of wetlands; and to develop a program of economic incentives to encourage wetlands conservation.

The Commission consisted of 15 members and included six legislators, one landowner, one commercial fisherman, one member of the homebuilding industry, one representative of wildlife interests, one representative of the mining industry, one each from forestry and agriculture, one representative of an environmental organization, and one representative from the Department of Environment, Health, and Natural Resources (DEHNR).

The Wetlands Protection Study Commission met seven times in an effort to fulfill its mandate to develop a statewide program to manage activities in wetlands in North Carolina. The activities of the Commission included hearing from a broad range individuals, environmental organizations, government agencies, and private interests involved in wetlands issues. Toward the end of its deliberations, the Commission discussed proposals to direct the Environmental Management Commission (EMC) to develop and adopt a State Wetlands Conservation Plan and to broaden the EMC's authority to regulate activities in wetlands and other waters of the State. The Commission was unable to reach a consensus on these issues but agreed that the proposals

constituted a good starting place for further discussion and debate. The Commission concluded that there remained many issues to be addressed and that there was a continuing need to develop a State plan to manage activities in wetlands. The Commission recommends that 1991 General Assembly reauthorize the Wetlands Protection Study Commission for continued study with a final report due at the convening of the 1993 General Assembly.

COMMITTEE PROCEEDINGS

The Wetlands Protection Study Commission met seven times during the 1989-1991 biennium. The Commission held one field trip to view a variety of wetland sites in Carteret County.

January 26, 1990

At its initial meeting, the Commission heard from a number of State and federal agencies whose programs involve wetlands regulation. John Dorney from DEHNR gave the Commission an overview of the wetlands types in North Carolina, the primary values or uses of wetlands, and the existing State programs affecting activities in wetlands. Dennis Stewart, with the N.C. Wildlife Resources Commission (WRC) presented information on the federal Fish and Wildlife Coordination Act and the role of the WRC in protecting wildlife and fisheries resources.

The federal agency presenters included representatives from the U.S. Army Corps of Engineers, discussing the federal 404 program; the U.S. Fish and Wildlife Service, presenting information about the federal Endangered Species Act and explaining the role USF&W plays in the 404 permit process; the U.S. Environmental Protection Agency, discussing their role in the 404 permit process and the issues involved in State assumption of the 404 permit process; and the National Marine Fisheries Service, discussing their role in wetlands conservation and management and their input into the 404 process.

The initial meeting concluded with a panel discussion on wetlands issues with the above State and federal agencies.

March 2, 1990

The March 2, 1990 Commission meeting members heard from numerous interest groups wishing to be heard on wetlands issues. The presenters included:

- N.C. Farm Bureau Federation
- N.C. Home Builders Association
- N.C. Aggregates Association
- Martin Marietta Aggregates
- Southern Products and Silica Company
- N.C. State University Hardwood Research Cooperative
- Division of Environmental Health, DEHNR
- N.C. Coastal Federation
- N.C. Environmental Defense Fund
- Conservation Council of N.C.
- N.C. Department of Transportation.

September 18, 1990

At the September 18, 1990 meeting the Commission discussed a variety of issues. The first issue on the agenda was a recent Regulatory Guidance Letter issued by the Army Corps of Engineers on mechanized landclearing activities. That letter stated that mechanized landclearing activities constitute point source discharges into wetlands and are subject to 404 jurisdiction.

The balance of the September meeting was taken up by an intense Commission discussion of the pros and cons, including procedural issues, of DEHNR's document entitled "Best Management Practices for Forestry in Wetlands." As a part of that discussion, the Commission heard from individuals within the Department who prepared and supported the BMP's as well as those within the Department who had concerns whether the BMP's adequately addressed the issue of preserving State wetlands and their values.

October 30, 1990

At the October 30, 1990 meeting the Commission heard from Dr. Tom Hoban, Associate Professor at N.C. State University. Dr. Hoban is conducting an ongoing survey of public knowledge of and attitudes about natural resources in the Albemarle-Pamlico Sound area as a part of the ongoing Albemarle-Pamlico Estuarine Study (APES). Part of his survey included questions on wetlands: problems associated with the draining or filling of wetlands, competing uses for wetlands, and the importance of private ownership rights versus regulations to control water pollution.

The Commission also heard a presentation by Mr. Ken Stewart of the N.C. Economic Alliance. The Alliance prepared and released a report on the negative impact on land values and economic activity should existing wetlands regulations be fully enforced. Dr. Glen Anderson, Senior Economist with the Environmental Defense Fund, presented information in rebuttal of the N.C. Economic Alliance Report.

The final issue considered at the October 30, 1990 meeting was the extent of wetlands losses in North Carolina. Concomitant with this issue, the Commission discussed the question of what constitutes a wetlands loss. Mike Gantt and Tom Dahl of the U.S. Fish and Wildlife Service presented the latest USF&W's data on wetlands losses in North Carolina. That data puts wetlands losses in North Carolina at approximately 49%. According to USF&W, a wetlands loss is considered to have occurred when a wetland area is drained and no longer supports hydrophytic vegetation.

John Dorney, DEHNR, presented data on the breakdown of wetlands areas and types in a report prepared by the Department for the Commission entitled, "Original Extent, Status and Trends of Wetlands in North Carolina: A Draft Report to the N.C. Legislative Study Commission on Wetlands Protection." A copy of that report is included in the minutes of the Commission and is on file in the legislative library. At the end of the meeting, a handout was distributed containing proposals by the Chair for Commission findings and recommendations to the 1991 General Assembly. Another set of proposals, prepared by Mr. Kirkman, was also provided to the Commission.

November 28, 1990

On November 28, 1991, the Commission met in Carteret County and toured a number of wetland sites and spoke with county residents about the impacts of both wetland regulation and wetland degradation on their lives and economy. The tour included a stop at South River Seafood to discuss the impact of development in wetlands on the fishing industry, a tour of two project sites operated by Weyerhaeuser (an industrial plantation establishment and a water management system), and a look at two construction sites in wetlands off Highway 70 west of Morehead City, one of which was located in a headwater.

December 20, 1990

At the December 20, 1991 meeting, the Commission began discussing a number of specific proposals that it might make in its report to the 1991 General Assembly. The Chairs distributed a proposed bill that encompassed many of the recommendations contained in their proposal handed out at the October 30, 1990 meeting. The bill defined wetlands according to the definition contained in the federal Food Security Act of 1985. It also proposed that the EMC be directed to develop and implement a State Wetlands Conservation Plan. The plan would have required the classification of wetlands in the State and called for mitigation of all unavoidable adverse wetlands impacts. After considerable discussion, the Commission directed that a number of changes be made to the proposal and the amended bill mailed to Commission members for discussion at the next meeting.

January 25, 1991

At the January 25, 1991 meeting, the Commission considered additional proposed legislation for the Commission report. The Commission, however, decided not to recommend substantive legislation to the 1991 General Assembly, but did vote to prepare a report summarizing the Commission's proceedings and recommending that the 1991 General Assembly reauthorize the Wetlands Protection Study Commission for further consideration of State wetlands problems and issues.

COMMISSION RECOMMENDATION AND LEGISLATIVE PROPOSAL

The Wetlands Protection Study Commission held extensive discussions on many of the issues that need to be addressed in developing a Statewide plan to manage activities in wetlands. The issues involved, however, are very complex and the range of interests affected broad. The Commission concluded that further study was necessary before it could make substantive recommendations to the legislature for action. The Wetlands Protection Study Commission therefore, recommends that the Commission be reauthorized and continued through the 1991 -1993 Biennium.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

LEGISLATIVE PROPOSAL I
THIS IS A DRAFT 20-FEB-91 11:55:42

Short Title: Continue Wetlands Study

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CONTINUATION OF THE WETLANDS PROTECTION
3 STUDY COMMISSION
4 Whereas, the social, legal and economic issues involved in
5 the regulation of wetlands are very complex; and
6 Whereas, the Wetlands Protection Study Commission has met
7 numerous times to develop a working knowledge of wetlands issues
8 and the impact of existing and proposed wetlands regulations on
9 the affected individuals, communities and industries; and
10 Whereas, many of the issues that the Commission was
11 directed to study by the 1989 General Assembly have not been
12 fully studied and resolved; and
13 Whereas, there is a continuing need to study wetlands
14 protection and develop State policy for the management of
15 activities in wetlands; Now therefore.
16 The General Assembly of North Carolina enacts:
17 Section 1. The Wetlands Protection Study Commission,
18 created by Section XVI of Chapter 802 of the 1989 Session Laws,
19 shall continue in existence until the convening of the 1993
20 Session of the General Assembly.
21 Sec. 2. Section 16.3 of Chapter 802 of the 1989 Session
22 Laws is rewritten to read:
23 "Sec. 16.3. The Legislative Study Commission on
24 Wetlands Protection shall consist of 15 members. The President

1 Pro Tempore of the Senate shall appoint five members: three
2 Senators, one landowner, and one commercial fisherman. The
3 Speaker of the House shall appoint five members: three
4 Representatives, one member associated with the homebuilding
5 industry, and one representative of wildlife resources interests.
6 The Governor shall appoint five members: one representative of
7 the mining industry, one representative of agriculture, one
8 representative of an environmental organization, one
9 representative of forestry, and one representative of the
10 Department of Environment, Health, and Natural Resources. The
11 President Pro Tempore of the Senate and the Speaker of the House
12 shall each designate a cochairman from the membership of the
13 Commission. Appointments shall be made no later than September
14 1, ~~1989~~, 1991, and members shall serve until the termination of
15 the Commission. Vacancies on the Commission shall be filled by
16 the office making the initial appointment."

17 Sec. 3. Section 16.6 of Chapter 802 of the 1989 Session
18 Laws is rewritten to read:

19 "Sec. 16.6. The Commission may file a report with the
20 ~~1989~~ 1991 General Assembly, ~~1990~~ 1992 Regular Session.
21 Otherwise, the Commission shall file a report with the General
22 Assembly not later than ~~March 1, 1991~~, the convening date of the
23 1993 General Assembly. The Commission shall terminate upon the
24 filing of its report."

25 Sec. 4. Unexpended funds appropriated to the Wetlands
26 Protection Study Commission by the 1989 General Assembly shall
27 remain available to fund the continued Wetlands Protection Study
28 Commission. Of the funds appropriated by the 1991 General
29 Assembly, there is allocated the sum of \$10,000 for the 1991-92
30 fiscal year and the sum of \$15,000 for the 1992-93 fiscal year to
31 fund the work of the Commission created by this Part.

32 Sec. 5. This act shall become effective upon
33 ratification.

APPENDIX A

PART XVI.-----LEGISLATIVE STUDY COMMISSION ON WETLANDS PROTECTION

Sec. 16.1. The General Assembly recognizes that North Carolina's wetlands are a valuable and productive resource. Wetlands serve a number of functions which are vital to the public health, safety, and welfare. Wetlands (i) protect the drinking water supply by providing a natural filter for both surface water and groundwater resources; (ii) trap nutrients, sediments, and other pollutants capable of polluting downstream waters; (iii) reduce flood and storm damage, thereby preventing a loss of life and property; (iv) provide shoreline stabilization; (v) provide essential breeding, spawning, nesting and wintering habitat for fish and wildlife, including many species that are of commercial or recreational value; (vi) supplement surface water supplies during drought by gradually releasing stored floodwaters and groundwater; and (vii) serve as a source of timber production which is of great economic value to the State.

The General Assembly recognizes that there is an immediate need to study wetlands protection and to develop a legislative program for the management of activities in wetlands. The goals of the wetlands protection program shall be to preserve wetlands of significant ecological value; to protect and manage wetlands so as to prevent any net loss of their ecological functions; to preserve private property rights; and to simplify and consolidate wetlands regulations. The long-term goal of the program shall be to increase the number and enhance the quality of wetlands in the State.

Sec. 16.2. There is created a Legislative Study Commission on Wetlands Protection. The Commission shall study the desirability and feasibility of State assumption and adaptation of the federal permitting program under Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (33 USC § 1344). The Commission may appoint a subcommittee of its members for purposes of this study. The Commission or subcommittee shall receive and acquire such information, including testimony, as is necessary to determine whether such assumption should be sought and, if so, what procedure should be followed to accomplish such assumption. Additionally, the Commission shall study the necessary elements of a statewide wetlands protection program and shall develop recommendations for legislation to establish a wetlands protection program that will be adequate to preserve wetlands of significant ecological value from unnecessary alteration; to protect and manage wetlands so as to prevent any net loss of the ecological function of wetlands; and to develop a program of economic incentives to encourage wetlands conservation. In developing its recommendations, the Commission shall study:

(1) Classification and regulation of wetlands based on their relative resource values, value to the ecosystems and value for economic development;

(2) Exemptions for agriculture, forestry, and mining activities;

(3) Mitigation of wetlands losses and creation of a mitigation bank to accept donations of property and payments in lieu of actual mitigation;

(4) Positive and negative impacts on wetlands of activities including, but not limited to, drainage, excavation, filling, development, and wildlife habitat improvements; and

(5) Definition and identification of different types of wetlands.

In developing recommendations the Commission, and subcommittee if created, shall obtain and receive public comment on existing and desired wetlands regulation and incentives and protection policies.

Sec. 16.3. The Legislative Study Commission on Wetlands Protection shall consist of 15 members. The President Pro Tempore of the Senate shall appoint five members: three Senators, one landowner, and one commercial fisherman. The Speaker of the House shall appoint five members: three Representatives, one member associated with the homebuilding industry, and one representative of wildlife resources interests. The Governor shall appoint five members: one representative of the mining industry, one representative of agriculture, one representative of an environmental organization, one representative of forestry, and one representative of the Department of Environment, Health, and Natural Resources. The President Pro Tempore of the Senate and the Speaker of the House shall each designate a cochairman from the membership of the Commission. Appointments shall be made no later than September 1, 1989, and members shall serve until the termination of the Commission.

Sec. 16.4. At the request of the Commission, the Legislative Services Commission may assign professional and clerical staff to assist in the work of the Commission. The Commission may also employ any professional and clerical staff it deems necessary to the performance of its duties. With approval of the Legislative Services Commission, the Commission may meet in the State Legislative Building or Legislative Office Building.

Sec. 16.5. Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are State officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5.

Sec. 16.6. The Commission may file a report with the 1989 General Assembly, 1990 Regular Session. Otherwise, the Commission shall file a report with the General Assembly not later than March 1, 1991. The Commission shall terminate upon the filing of its report.

Sec. 16.7. Of the funds appropriated to the General Assembly there is allocated the sum of \$15,000 for the 1989-90 fiscal year and the sum of \$15,000 for the 1990-91 fiscal year to fund the work of the Commission created by this Part.

APPENDIX B

Commission: WETLANDS PROTECTION, LEGISLATIVE STUDY COMMISSION ON
Authority: 1989 Session Laws, Chapter 802, Part XVI, SB 231
(SB 1250-Barker)
Report to: General Assembly
Date: The Commission may file a report with the
1989 General Assembly, 1990 Regular Session.
Otherwise, the Commission shall file a report
with the General Assembly not later than 3/01/91.

**President Pro Tempore's
Appointments**

Sen. Thomas F. 'Tom' Taft
Co-Chairman
P.O. Box 566
Greenville, NC 27835
(919)752-2000

Sen. William H. 'Bill' Barker
P.O. Box 1339
New Bern, NC 28560
(919)638-1901

Mr. Kenneth M. Kirkman
Attorney at Law
P.O. Drawer 1347
Morehead City, NC 28557-1347
(919)726-8411

Mrs. Lena Ritter
Route 2, Box 259
Holly Ridge, NC 28445
(919)329-8821

Sen. Dennis J. Winner
81-B Central Avenue
Asheville, NC 28801
(704)258-0094

**Speaker's
Appointments**

Rep. W. Bruce Ethridge
Co-Chairman
715 Ann Street
Beaufort, NC 28516
(919)728-2600

Mr. Jud Ammons
140 Ammons Drive
Raleigh, NC 27615
(919)848-3750

Dr. Mike Corcoran
N.C. Wildlife Federation
P.O. Box 10626
Raleigh, NC 27605
(919)856-1581

Rep. George S. Robinson
P.O. Box 1315
Lenoir, NC 28645
(704)728-2902

Rep. John H. Weatherly
Route 3, Box 728
Kings Mountain, NC 28086
(704)487-0039

Governor's Appointments

Mr. Daniel V. 'Dan' Besse
P.O. Box 1145
New Bern, NC 28560
(919)637-9502

Mrs. Edythe M. McKinney
4313 Union Street
Raleigh, NC 27609
(919)733-4984

Mr. William A. Schimming
214 Churchill Drive
Greenville, NC 27858
(919)322-8239

Mr. Robert Slocum
212 Laurie Lane
Cary, NC 27513
(919)834-3943

Wetlands Protection, Legislative Study Commission on
--continued--

Governor's Appointments
--continued--

Mr. James R. 'Jim' Oliver
5301 Emerson Drive
Raleigh, NC 27609
(919)733-0953

Staff:

* Barbara Riley
Research Division
(919)733-2578

Emily Johnson
Bill Drafting Division
(919)733-6660

Clerk:

Elaine Myers
Room 519
Legislative Office Building
O: (919)733-5856
H: (919)847-1170

Nancy Pulley
Room 2005
Legislative Building
O: (919) 733-5252